



**CITY OF SUNNYVALE  
REPORT  
Planning Commission**

**September 25, 2006**

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**SUBJECT:**           **2006-0683:** Appeal of a decision by the Director of Community Development denying a Tree Removal Permit for a Coast Redwood tree and a Chinese Elm tree located in the back yard of a single family home. The property is located at **1590 Oriole Avenue** in an R-0 (Low Density Residential) Zoning District. (APN: 313-29-002)

**REPORT IN BRIEF**

**Existing Site Conditions**           Single Family Residence. The subject Redwood and Elm trees are located in the back yard.

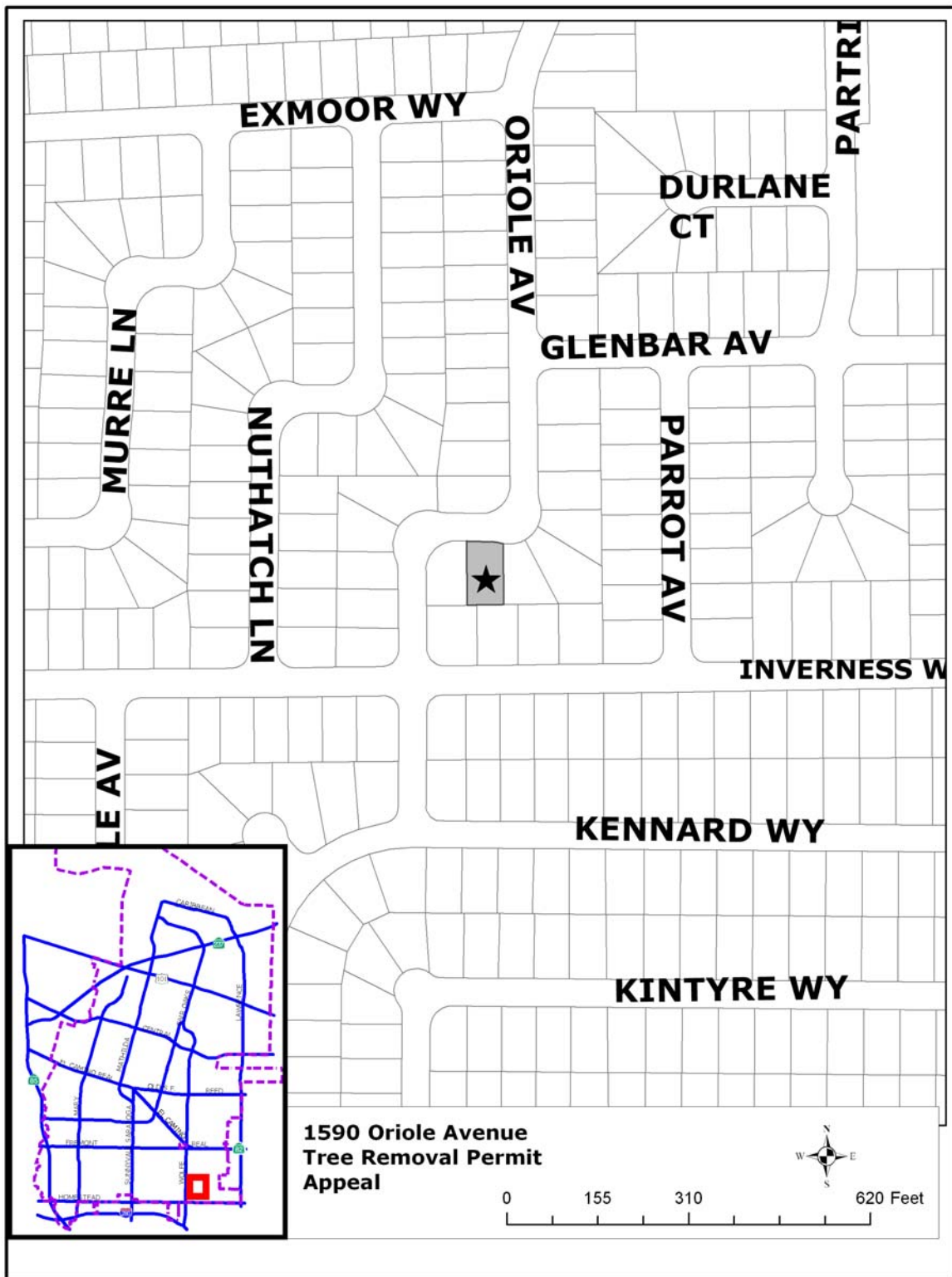
**Surrounding Land Uses**

North	Single Family Residential (across street)
South	Single Family Residential
East	Single Family Residential
West	Single Family Residential

**Issues**                               Tree Removal Permit

**Environmental Status**           A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines.

**Staff Recommendation**           Deny the appeal and uphold the Decision of the Community Development Director to deny the Tree Removal Permit.



**PROJECT DATA TABLE**

	<b>EXISTING</b>	<b>PROPOSED</b>	<b>REQUIRED/ PERMITTED</b>
<b>General Plan</b>	Low Density Residential	Same	Same
<b>Zoning District</b>	R-0	Same	Same
<b>Lot Size (s.f.)</b>	6,200 s.f.	Same	6,000 min.

**ANALYSIS****Description of Proposed Project**

In March 2006, the property owner requested a Tree Removal Permit for a Redwood tree and an Elm tree located in the backyard of a single family home. The Redwood tree is approximately 88 inches in circumference and 50-60 feet high, and is located about 3 feet away from the rear property line. The Elm tree is approximately 53 inches in circumference and 20-25 feet high, and is located about 8 feet away from the rear property line. The Tree Removal Permit application stated that the trees were too big and too messy, that the Redwood tree was encroaching on the garden, and that the trees would interfere with the installation of solar panels on the roof. The City Arborist inspected the trees and recommended denial of the Tree Removal Permit. Following this recommendation, Planning Division staff visited the site to examine and photograph the trees (Attachment C – Photographs). Staff also determined the property owner had not made any application for a solar addition. Planning Division staff was unable to make a finding to allow removal of the trees, but agreed to place the application on hold due to pending modifications to the Tree Preservation Ordinance. The trees were reassessed with the modified Tree Preservation Ordinance in April 2006, but staff was still unable to make the necessary findings to grant a Tree Removal Permit. The applicant was notified of the denial of the Tree Removal Permit. The applicant did not appeal this decision.

On June 30, 2006, the property owner re-applied for a Tree Removal Permit for the same trees. The Tree Removal Permit application provided some additional detail on the reasons for removal, and added information on concerns about tree instability. The property owner also noted that staff should not visit the property again, and instead should review the previously submitted application materials (Attachment D – Tree Removal Permit Application). As a result,

Planning Division staff was unable to conduct a second site visit to inspect the trees. Staff took several additional photographs from the street, which indicated that the size and condition of the subject trees were comparable to those noted during the first Tree Removal Permit application process (Attachment C – Photographs). The City Arborist once again recommended denial of the Tree Removal Permit. Planning Division staff confirmed that the property owner still had not made an application for a solar addition. Staff was unable to make a finding to allow for removal of the trees. The applicant was notified of the denial of the Tree Removal Permit (Attachment E – Permit Decision Letter).

The applicant appealed the Director of Community Development's decision on August 2, 2006 (Attachment F – Appeal Letter).

### **Background**

**Previous Actions on the Site:** The following table summarizes previous planning applications related to the subject site.

<b>File Number</b>	<b>Brief Description</b>	<b>Hearing/Decision</b>	<b>Date</b>
2006-0683	Tree Removal Permit for Redwood and Elm trees	Staff Review/ Denial	07/18/2006
2006-0236	Tree Removal Permit for Redwood and Elm trees	Staff Review/ Denial	04/24/2006
1962-0060	Variance for reduced rear yard setback for unenclosed patio	Board of Zoning Adjustment Hearing/ Approval	06/11/1962

### **Environmental Review**

A Class 4 Categorical Exemption relieves this project from California Environmental Quality Act provisions and City Guidelines. Class 4 Categorical Exemptions include minor alteration of land.

### **Tree Preservation Ordinance (SMC 19.94)**

The Tree Preservation Ordinance was established in 1991 in order to preserve mature trees of significant size. Chapter 19.94 of the Sunnyvale Municipal Code defines a 'protected tree' as a tree with circumference equal to or greater than 38 inches when measured four and one half feet above the ground. A Tree Removal Permit must be obtained prior to removal of a protected tree from private property in any zoning district. The Ordinance, which was recently modified on April 4, 2006, includes two new criteria to grant approval for a Tree Removal Permit (the site is over-landscaped; the tree has outgrown its useful landscape value).

Following are the finding(s) necessary to grant approval to remove a protected tree:

- a) The tree is diseased or badly damaged;
- b) The tree represents a potential hazard to people, structures or other trees,
- c) The tree is in sound condition, but restricts the owner's or the neighbor's ability to enjoy reasonable use or economic potential of the property.

*This section has a number of subsections noted in the Findings Section of this report (Attachment A).*

### **Applicant's Appeal**

The applicant's appeal letter states the following (see Attachment F for Appeal Letter).

- The Redwood tree is located in a small area and its roots are bound;
- The Redwood tree interferes with telephone, power, and cable wires for three homes and has the potential to disrupt these services;
- The Redwood tree could fall in a storm, representing a hazard to nearby homes and their occupants;
- The Redwood tree's roots protrude from the lawn, making it difficult to walk or mow in the back yard;
- The Elm tree's canopy is unbalanced, posing a falling hazard;
- The Redwood tree's roots encroach on the vegetable garden, reducing its production;
- The Elm tree shades the vegetable garden, reducing its production;
- The Redwood tree's roots are causing other major damage to the landscape which is expensive to repair, such as lifting the garden's timber border, clogging the French drain, and damaging the brick patio;
- Root damage to the brick patio causes rainwater to collect on the patio, which encourages mosquito breeding and poses a health risk;
- Both trees are currently too large for the yard;
- Redwood is an inappropriate species for planting in Sunnyvale;
- The significant canopy of these trees will interfere with the future addition of solar panels on the roof.

The applicant also verbally expressed the following additional concern to Staff:

- Maintenance of the subject trees is difficult and the property owner can no longer perform such maintenance without assistance.

**Staff Discussion of Appeal**

The City Arborist and Planning Division staff visited the site and determined that the subject trees located in the backyard appear to be healthy and structurally sound. The Redwood tree is about 30 years old and has a remaining life span of 40-50 years. The Elm tree is about 40-50 years old and has a remaining life span of 10-20 years.

Staff examined the issues presented by the appellant and notes the following:

- Redwood roots bound in a small location: The City Arborist has inspected the tree and has not found any evidence that the tree is impaired by surrounding structures. Staff believes the tree and its roots have sufficient space in its current location.
- Redwood tree interferes with telephone, power, and cable wires: The City Arborist has inspected the tree and does not believe it currently poses a hazard through its proximity to surrounding wires. The wires in question are not high-voltage.
- Redwood tree is a hazard due to risk of falling: The City Arborist has inspected the tree and has not found any evidence of instability. The tree appears to be healthy and structurally sound. Staff does not believe the tree currently poses a hazard.
- Elm tree is a hazard due to unbalanced canopy: The City Arborist has inspected the tree and has not found any evidence of instability. The tree appears to be healthy and structurally sound. Staff does not believe the tree currently poses a hazard.
- Redwood roots protrude from the lawn and encroach on the vegetable garden; Elm tree shades the vegetable garden: Staff acknowledges that large trees such as the subject Redwood can have extensive surface root systems. Some root protrusion from the ground is a normal part of tree growth. Large trees also take up water and nutrients from the soil and provide shade, which can inhibit the growth of smaller plants. However, the City of Sunnyvale places a high value on large mature trees. Large trees contribute to the scenic beauty and economic prosperity of the city. Trees enhance property values and moderate erosion, noise, pollution, and climate. For these reasons, the City Council chose to enact the Tree Preservation Ordinance. Alternatives to address the problem of nourishment for the garden and lawn include fertilizing the soil and planting shade-loving species under large trees.

- Redwood roots cause expensive property damage: As noted above, staff acknowledges that mature trees can have large surface root systems. These roots can interfere with patios, sidewalks, and fences. It is generally easy to repair damaged areas or replace them to prevent future damage. For example, a brick or concrete patio can be replaced with a raised deck, which allows space for surface tree roots to grow without causing damage. These repairs are a normal part of routine landscape maintenance associated with being a property owner. Staff acknowledges that these repairs can be expensive.
- Rainwater collection on damaged patio poses a health risk: Staff recommends replacing the damaged patio, preferably with a raised deck to prevent future damage. The new patio or deck should have a slightly sloped surface to reduce water collection. Alternatively, standing water can be swept from the existing patio to encourage faster drying and prevent mosquito breeding.
- Trees are too large for yard: The City Arborist has inspected the trees and does not believe they are too large or inappropriately located. Both trees have sufficient space and have not outgrown their useful landscape value. Staff understands that the property owner desires additional open space in the yard; however, this does not meet the findings necessary to remove a tree.
- Redwood is an inappropriate species for Sunnyvale: Staff disagrees that Redwood trees are inappropriate in Sunnyvale. The Coast Redwood is a native species to this area and is therefore considered highly desirable. Redwood trees are located throughout Sunnyvale, including a large number on the City Hall site. Staff agrees that Redwood trees are large and can take up a significant portion of a small yard. However, the City Arborist does not believe the tree has outgrown its useful landscape value.
- Tree canopies will interfere with a future solar addition: The property owner has not submitted an application for a solar addition. Staff cannot consider the tree's potential impacts on a solar addition in the absence of an approved or pending project. If the property owner chooses to develop and submit a proposal for a solar project, a new Tree Removal Permit request may be filed at that time.
- Trees are difficult to maintain: Staff agrees that large mature trees such as the subject Redwood and Elm require significant maintenance. For many large trees, pruning requires professional assistance. Hiring a professional landscaper is one option for reducing the burden of tree maintenance on the property owner. Maintaining trees and landscaping

may be difficult or expensive, but this does not meet the findings to remove a tree.

**Expected Impact on the Surroundings:** The Redwood tree, approximately 50-60 feet high, is clearly visible from the street. The Elm tree, approximately 20-25 feet high, is also visible from the street (Attachment C – Photographs). Staff finds that the removal of these trees would have a detrimental effect on the streetscape and the overall neighborhood.

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### **Fiscal Impact**

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No fiscal impact is expected.

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### **Public Contact**

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<b>Notice of Negative Declaration and Public Hearing</b>	<b>Staff Report</b>	<b>Agenda</b>
<ul style="list-style-type: none"><li>• Posted on the site</li><li>• Seven notices mailed to the property owners and residents adjacent to the project site</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City of Sunnyvale's web site</li><li>• Provided at the Reference Section of the City of Sunnyvale's Public Library</li></ul>	<ul style="list-style-type: none"><li>• Posted on the City's official notice bulletin board</li><li>• Posted on the City of Sunnyvale's web site</li></ul>

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### **Conclusion**

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**Findings and General Plan Goals:** Staff is recommending denial of this appeal because the findings (Attachment A) were not made.

**Conditions of Approval:** If the Planning Commission is able to make the required findings, staff is recommending Conditions of Approval (Attachment B).

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### **Alternatives**

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1. Uphold the decision of the Director of Community Development and deny the Tree Removal Permit.



2. Grant the appeal and approve the Tree Removal Permit subject to the recommended Conditions of Approval.
3. Grant the appeal and approve the Tree Removal Permit subject to modified Conditions of Approval.

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**Recommendation**

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Alternative 1

Prepared by:

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Mariya Hodge  
Project Planner

Reviewed by:

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Gerri Caruso  
Principal Planner

Approved by:

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Trudi Ryan  
Planning Officer

**Attachments:**

- A. Recommended Findings
- B. Recommended Conditions of Approval
- C. Photos of Subject Trees
- D. Tree Removal Permit Application
- E. Letter Denying Tree Removal Permit Application
- F. Letter of Appeal from the Applicant

**Recommended Findings – Tree Removal Permit**

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In order to grant a Tree Removal Permit, one or more of the following findings must be met. Staff was unable to make these required findings.

- a) The tree is diseased or badly damaged.

*The subject trees are in good health and are not diseased or damaged.*

- b) The tree represents a potential hazard to people, structures or other trees.

*City Staff inspected the site and the subject trees. Staff found no evidence of hazard, nor has such evidence been provided by the applicant.*

- c) The tree is in basically sound condition, but restricts the owner's ability to enjoy the reasonable use or economic potential of the property, or unreasonably restricts an adjoining property's use or economic potential of the adjoining property. In the event this is the sole basis for the application, the following criteria shall be used to evaluate the application under this subsection:

1. The necessity of the requested removal to allow construction of improvements such as additions to existing buildings or incidental site amenities or to otherwise allow economic or reasonable enjoyment of property;
2. The topography of the land and the effect of the requested action on water retention and diversion or increased flow of surface water;
3. The approximate age of the tree relative to its average life span;
4. The potential effect of removal on soil erosion and stability where the tree is located;
5. Current and future visual screening potential;
6. The property has become overlandscaped with trees so that they are too numerous, crowded, and unreasonably restricts the property owner's ability to use their land. In this event, selective removal can be approved in conjunction with acceptable arborist's practices; *(added 4/06)*
7. The tree has outgrown its useful landscape value due to its inappropriate species, size and location, relative to the existing structures on the property; *(added 4/06)*
8. Any other information the Director of Community Development finds pertinent to the application.

*Staff does not believe that the subject Redwood and Elm trees are restricting reasonable use or economic potential of the property. Damage to the brick patio and timber border near the base of the Redwood tree can be repaired to accommodate the raised landform. Shade-loving landscaping can be planted under the canopies of both trees to address the problem of the subject trees inhibiting the growth of smaller plants. Professional landscaping assistance may also reduce the burden of maintaining these trees for the property owner. While these trees are large, the property as a whole is not overlandscaped and the trees have not outgrown their useful landscape value.*

*The subject Redwood tree has a remaining life expectancy of at least another 40 years, while the subject Elm tree has a remaining life expectancy of at least another 10 to 20 years. Staff believes that the subject trees are in good health, are located in a reasonably acceptable location, and have significant remaining life spans that merit preservation.*

**Recommended Conditions of Approval – Tree Removal Permit**

If the Planning Commission is able to make the required findings to grant the appeal, Staff is recommending Conditions of Approval.

In addition to complying with all applicable City, County, State and Federal Statutes, Codes, Ordinances, Resolutions and Regulations, Permittee expressly accepts and agrees to comply with the following Conditions of Approval of this Permit:

Unless otherwise noted, all conditions shall be subject to the review of approval of the Director of Community Development.

1. Two replacement trees, a minimum of 15 gallon size, shall be planted anywhere on the property or an in-lieu fee of \$230.00 be paid to the City for each replacement tree not planted.
2. The replacement trees shall be planted within 90 days of tree removal.



**View of the Redwood and Elm trees (behind the house) from the street.**  
*Photo taken March 2006.*





**View of the Redwood tree and the fence along the rear property line.**  
*Photo taken March 2006.*





**View of the Elm tree and the rear yard.**  
***Photo taken March 2006.***



**View of the Redwood and Elm trees (behind the house) from the street.**  
*Photo taken July 2006.*





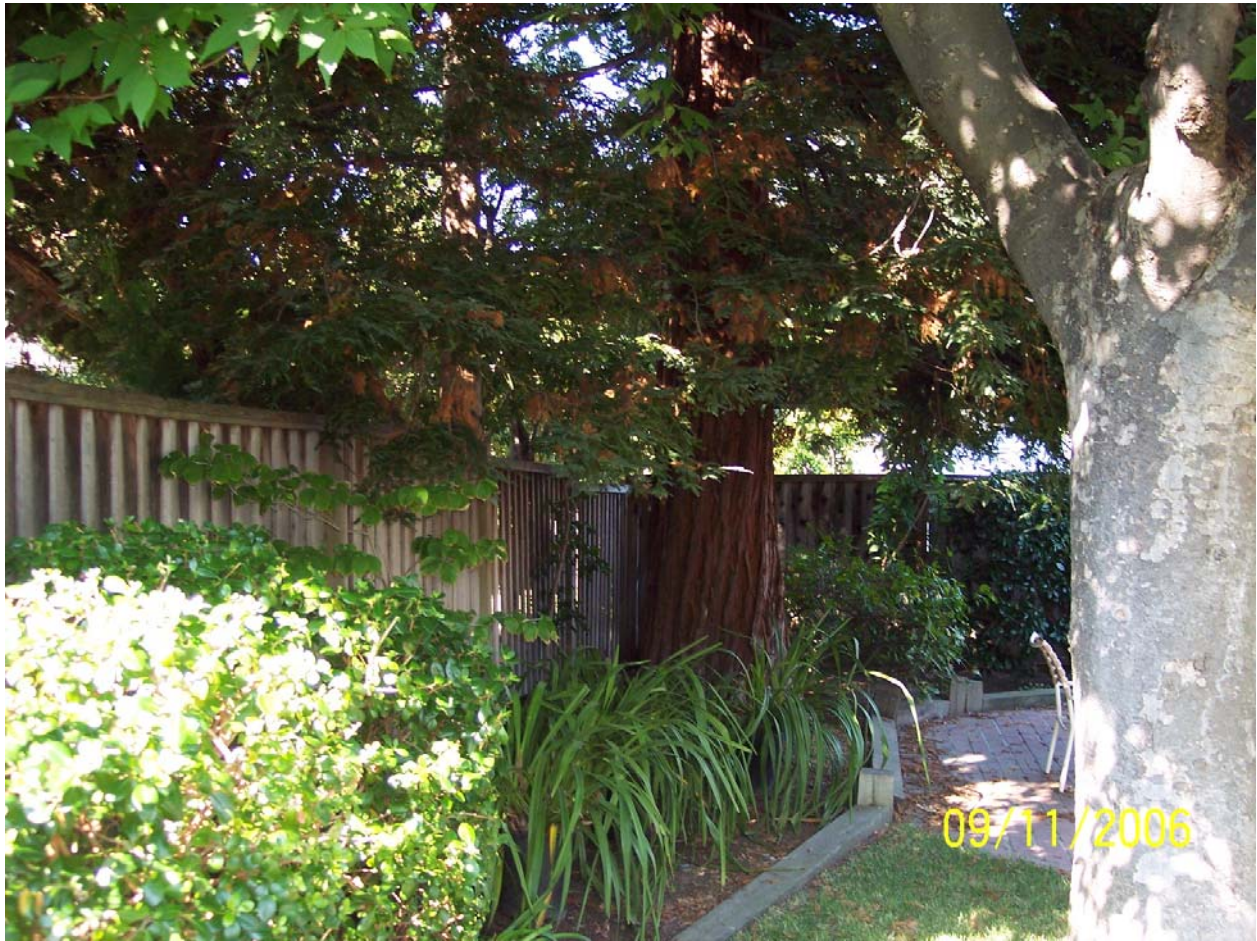
**View of the Elm tree and the rear yard.**  
***Photo taken September 2006.***





**View of the Elm tree and patio area (Redwood in the background).**  
***Photo taken September 2006.***





**View of the Redwood tree (Elm trunk in the foreground), the fence along the rear property line, and the patio area.**  
*Photo taken September 2006.*



**View of the organic vegetable garden with shade from the subject Elm tree (10:00 a.m.).**  
***Photo taken September 2006.***